of ordinary firmness. Chitty, *Contracts* (11th ed. 1874) 272 (where the text recognizes the possibility that a battery may constitute duress); *United States v. Huckabee* (1872, U. S.) 16 Wall. 414, 432; *Ortt v. Schwartz* (1916) 62 Pa. Super. Ct. 70. This, in turn, in some jurisdictions has been extended from an extrinsic standard to an individual one, depending on the character and power of resistance of the person seeking relief. See Joyce, *loc. cit.;* 3 Williston, *op. cit.,* sec. 1603; see NOTES (1913) 1 VA. L. REV. 481, 483; *Galusha v. Sherman* (1900) 105 Wis. 263, 81 N. W. 495. In general, threats against a wife, husband, parent, or child have been held to constitute duress. *Rostad v. Thorsen* (1917) 83 Ore. 489, 163 Pac. 423; *Spoerer v. Wehland* (1917) 130 Md. 226, 100 Atl. 287; see L. R. A. 1915D, 1120, note. In the more liberal jurisdiction threats against other relatives have been held sufficient. *Fountain v. Bigham* (1912) 235 Pa. 35, 84 Atl. 131 (son-in-law); *Sharon v. Gager* (1878) 46 Conn. 189 (nephew); *Davies v. London & P. Marine Ins. Co.* (1878) L. R. 8 Ch. Div. 469 (friend); 26 L. R. A. 64, note. The modern tendency seems to be toward the individual standard. See NOTES (1920) 20 COL. L. REV. 80. Statutes govern duress in some states now. *Pendleton v. Greever* (1920, Okla.) 193 Pac. 885; *Merchant's Collection Agency v. Roantree* (1918) 37 Calif. App. 88, 173 Pac. 600. Applying the individual standard, blood ties and relationship should have no operative effect of themselves. See 3 Williston, *op. cit.,* sec. 1621. Wherever duress has actually been found to exist, the courts appear to have granted relief irrespective of any relationship of the parties. Therefore, it would seem that the dissenting opinion in the principal case is in accord with the better and more liberal rule.

CONTRACTS—USAGE AND CUSTOM—WHEN ADMISSIBLE AS PART OF CONTRACT.—The plaintiff contracted to sell to the defendant, a wholesale dealer, 50,000 tons of coal to be shipped in equal monthly instalments, for twelve months beginning December 30, 1915. The amount of coal called for per month was never actually delivered, but the defendant paid for what he got. During the period September-November the plaintiff delivered 8,400 tons, but the defendant refused to pay for a substantial part of it. In an action for goods sold and delivered the defendant set up a counterclaim for damages for breach of contract during September-November, whereupon the plaintiff pleaded a usage, that where cars were not available for the full amount of coal contracted for, the coal would be apportioned pro rata among the vendees. Evidence was admitted to prove the usage, to which the defendant excepted. *Held,* that evidence of the usage as part of the contract was admissible. *Nicoll v. Pittsvein Coal Co.* (1920, C. C. A. 2d) 269 Fed. 968.

In the instant case no question as to the existence, reasonableness, legality, or other necessary elements of the usage is involved. See 2 Williston, *Contracts,* (1920) secs. 657-661; 27 R. C. L. 154-168. Nor is the usage offered to interpret the language of the agreement. See 2 Williston, *op. cit.,* sec. 650; 4 Wigmore, *Evidence* (1905) sec. 2464. But if admissible, the facts of the usage are added to and become part of the agreement itself. The general way of expressing the rule is that where the usage varies or contradicts the written terms of the instrument, it is not admissible. *United Steel & Metal Corp. v. Catevenis* (1920, App. Div.) 182 N. Y. Supp. 879; *Guild v. Sampson* (1919) 232 Mass. 509, 122 N. E. 712. This is fallacious, because any usage if admitted is bound to vary the writing. The principal case applies what seems to be the better test, namely, whether or not the parties intended to include the usage. *Humfrey v. Dale* (1857, Q. B.) 7 El. & Bl. 266, 274; see 4 Wigmore, *op. cit.,* secs. 2430, 2440; 2 Williston, *op. cit.* secs. 651-652. The presumption is that unless it is specifically excepted, both parties contracted with reference to it. *Lillard v. Ky. Distilleries & Warehouses* (1904, C. C. A. 6th) 134 Fed. 168; see 2 Williston, *op. cit.,* sec. 656. But the usage is not admissible if, when it is included in the agreement, it would be

clearly repugnant to the other terms. See *Humfrey v. Dale, supra,* per Lord Campbell. The cases are in confusion and the courts appear to decide each case according to its own peculiar circumstances. *Sutro v. Heilbut* [1917, C. A.] 2 K. B. 348 (transportation by land substituted in term of contract specifying transportation by water, when necessary); *McDonald v. Union Hay Co.* (1919) 143 Minn. 40, 172 N. W. 891 (usage admitted to show requirement of 24 hour ultimatum before breach could be operative); but see *contra, Hart v. Cort* (1914) 165 App. Div. 583, 151 N. Y. Supp. 4 (usage not admissible to show that license to produce play meant an exclusive license). If in the instant case the contract had called for delivery *unconditionally,* the usage would be clearly repugnant. But the words of the contract are not such as specifically to exclude the usage. Thus it seems that in admitting the usage, the principal case is in accord with the better view.

CRIMINAL LAW—SCIENTER AND INTENT UNNECESSARY IN STATUTORY CRIMES.—The plaintiff junk dealer was indicted and pleaded guilty under section 169 of the federal Criminal Code, which declares that "whoever, without lawful authority, shall have in his possession" any die which could be used in counterfeiting United States coin, shall be punished. He made an explanatory statement to the court outside his pleadings that the dies came into his possession without his knowledge in a purchase of junk. He then sued out a writ of habeas corpus, and contended that the law was contrary to the Fifth Amendment in that it made criminal a possession which was neither willing nor conscious. *Held,* that the law was constitutional. *Baender v. Barnett* (1921) 41 Sup. Ct. 271.

In deciding the case the court states that the statute must be construed as intending to make criminal only a willing and conscious possession of such dies, and that by pleading not guilty and showing his ignorance of the presence of them he would not have been convicted. The rule at common law is that a mere intention to commit a crime without any overt act accompanying it, or a mere overt act with no intention to commit a crime is not punishable. 1 Bishop, *New Criminal Law* (8th ed. 1892) secs. 204-208. In statutory crimes, a criminal intent not connected with any overt act may not be punished as a crime, and any statute purporting to do so is unconstitutional. *Ex parte Smith* (1896) 135 Mo. 223, 36 S. W. 628; *Proctor v. State* (1918, Okla. Cr. App.) 176 Pac. 771. It is held that an overt act done contrary to the letter of the statute, but with no criminal intent to violate it, is punishable as a crime. *People v. Emmons* (1913) 178 Mich. 126, 144 N. W. 479; *State v. Smith* (1920, Mont.) 190 Pac. 107. However, it has been stated that even an unconscious possession of a prohibited article would be sufficient ground for a valid conviction, though "a conviction would be unlikely." See *People v. Johnson* (1919) 288 Ill. 442, 445, 123 N. E. 543, 545. Where a storekeeper sold naphtha under a trade name of "Lustro," not knowing it was naphtha, he was found guilty under a statute forbidding its sale. *Gately v. Taylor* (1912) 211 Mass. 60, 97 N. E. 619. The same result was reached in a sale of oleomargarine. *State v. Newton* (1885, Sup. Ct.) 50 N. J. L. 534. It is submitted that under sufficient necessity the legislatures might declare even a totally unconscious possession of an article sufficient ground for a valid conviction.

INSURANCE—STANDARD FIRE POLICY—VALIDITY OF THE CO-INSURANCE CLAUSE.—The plaintiff was insured with the defendant company under a fire policy in the standard form. The defendant inserted in this policy a co-insurance clause by which, if the plaintiff failed to carry insurance up to 80 per cent of the value of the property, the defendant would not be liable for a greater proportion of any loss than the sum insured bears to 80 per cent of the value of the property at the time of loss. The standard policy laws permit the addition of clauses,